SUPREME COURT, U.S.
FILED
MAR 6 2003
OFFICE OF THE CLERK

No. 02-1137

IN THE

Supreme Court of the United States

NATHAN MOORE,

Petitioner,

v.

HOME DEPOT U.S.A., INC.,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

A. Whether the decision of the Court of Appeals for the Eleventh Circuit in this case holding that an evidentiary hearing is not required when the existence and/or terms of a settlement agreement are not in dispute is in conflict with *Alexander v. Gardner-Denver Co.*, 415 U.S. 36, 94 S. Ct. 1011 (1974).

B. Whether the Eleventh Circuit's affirmance of the district court's application of state contract law to the enforceability of a settlement agreement is in conflict with *Alexander v. Gardner-Denver Co.*, 415 U.S. 36, 94 S. Ct. 1011 (1974).

RULE 29.6 STATEMENT

Respondent, Home Depot U.S.A., Inc., has the following parent companies: Home Depot International, Inc. and The Home Depot, Inc. No publicly held company owns 10% or more of its stock.

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STATEMENT OF THE CASE

On March 1, 2001, Petitioner filed his Amended Complaint which included the following counts: "Count I - Race Discrimination in Violation of Title VII of the Civil Rights Act of 1991;" "Count II - Race Discrimination in Violation of Florida Civil Rights Act F.S. 760.10 and Section 1981 of Civil Rights Act of 1891"; and "Count III - Retaliation Florida Whistleblower Act F.S. 448." R19. On May 9, 2001, Respondent filed its Motion to Dismiss Amended Complaint. R34. Before any order being entered on Respondent's Motion to Dismiss Amended Complaint, on July 24, 2001, Petitioner filed his Second Amended Complaint which contained the following counts: "First Claim for Relief - Disparate Treatment, 42 U.S.C. § 1981/ Title VII" and "Second Claim for Relief - Retaliation, 42 U.S.C. § 1981/Title VII". R42. In response, on August 15, 2001, Respondent filed its Motion to Strike Or Alternatively To Dismiss Second Amended Complaint. R47.

On September 27, 2001, the parties attended mediation which continued on October 1, 2001. R51; R55; R57; R66. Present during both days of mediation were the following individuals: Petitioner; Petitioner's former counsel, Jacob Rose; John Schiller, corporate representative of Respondent; Patricia E. Lowry and David I. Spector, counsel for Respondent; and Mediator Steven Mayans. R55; R57. The mediation was continued from September 27, 2001 to October 1, 2001 because Petitioner claimed that a crucial piece of evidence, the affidavit of Kelvin Polk, was in the process of being obtained and would be available for review by Respondent by October 1, 2001. R68, p. 9. After obtaining the affidavit of Kelvin Polk, and at the conclusion of the second day of mediation, both parties and their counsel —

including Petitioner and his counsel Jacob Rose — executed the Mediation Settlement Agreement. R55; R57; R66. The Mediation Settlement Agreement contained all of the material terms of the settlement reached at mediation. R66. In addition to other material terms, the Mediation Settlement Agreement signed by Petitioner included an agreement by the parties to execute a formal Settlement Agreement and Full and Final General Release which incorporates all of the terms contained in the Mediation Settlement Agreement. R66. Respondent immediately advised the district court of the settlement by filing its Notice of Settlement on October 3, 2001. R55.

On October 4, 2001, the district court entered its Order Dismissing Cause Upon Notice of Settlement and dismissed the case without prejudice. R56. The district court retained jurisdiction for sixty (60) days to enter judgment or final order of dismissal, and if necessary, to enforce settlement. R56. On October 9, 2001, the mediator filed his Mediation Report also reporting that the conflict had been resolved completely. R57.

Subsequent to the mediation, Petitioner apparently wrote two letters, one dated October 2, 2001 and another dated October 3, 2001, to his counsel and apparently also sent copies to the district court, requesting that the settlement agreement which he signed be rescinded. R66. Counsel for Respondent received copies of these letters only after they were forwarded to Respondent by Petitioner's then counsel Jacob Rose with a letter from Rose dated October 3, 2001. R58. Petitioner's letter dated October 2, 2001 unequivocally states that he signed the Mediation Settlement Agreement. R66.

On October 30, 2001, after Petitioner refused to execute the subsequently drafted typewritten Settlement Agreement and Full and Final General Release, Respondent filed its Motion to Enforce Settlement Agreement ("Motion to Enforce"). R58. The district court set a hearing on the motion to enforce initially for November 29, 2001, which hearing was then rescheduled on December 14, 2001. R59. Before the hearing, Petitioner retained new counsel, Isidro Garcia, who filed his Notice of Appearance on December 5, 2001. R61. Two days before the December 14, 2001 hearing, and 28 days after a response was due pursuant to the Local Rules for the Southern District of Florida, Petitioner filed a response in opposition to the motion to enforce. R63.

The parties and their counsel appeared before the district court on December 14, 2001 and argued the motion to enforce. R64. The district court requested, and was provided with, a copy of the Mediation Settlement Agreement during the hearing. No objection was raised by Petitioner or his counsel. R68, pp. 8-9. The district court correctly held that settlement agreements are construed under the law as contracts and the fact that an agreement may provide for a later more specific agreement does not affect the enforceability of the original agreement. R65, pp. 2-3. The district court also correctly found, based on the settlement agreement in the record and Petitioner's letters to the court, that Petitioner, with his attorney at his side, knowingly and voluntarily agreed to the terms of the Mediation Settlement Agreement and manifested his intention through his execution of the agreement. R65, p. 4. The district court granted the Motion to Enforce and ordered Petitioner to execute a general release in favor of Respondent within twenty (20) days of the order. R65, p. 4. On February 5, 2002, Petitioner filed his Motion for Rehearing in which

he sought to be given an opportunity at an evidentiary hearing "to contest the speculative findings the Court has drawn from [Petitioner's] signature and from [Petitioner's] letter to the Court." R67. In the alternative, Petitioner requested that the district court enter a final judgment and a stay of said final judgment until Petitioner's appellate remedies were exhausted. R67. The district court denied Petitioner's request on March 21, 2002. R70.

On appeal, the Eleventh Circuit determined that the district court did not err in enforcing the handwritten settlement agreement without an evidentiary hearing. In reaching this conclusion, the Eleventh Circuit relied on existing circuit precedent, *Murchison v. Grand Cypress Hotel Corp.*, 13 F.3d 1483 (11th Cir. 1994), which holds that only when the existence or terms of the settlement agreement or the authority of the attorney to enter into the settlement agreement are in dispute must the district court hold an evidentiary hearing. *Id.* at 1485. The Eleventh Circuit also rejected Petitioner's argument that the agreement was invalid as to any age discrimination claim based upon an alleged failure to meet the requirements of the Older Workers Benefit Protection Act ("OWBPA") because the seven-day revocation period found in the OWBPA is inapplicable to a settlement of an action filed in court. 29 U.S.C. § 626(f)(2). Petitioner has not raised the application of the OWBPA in his Petition before this Court.

REASONS FOR DENYING THE PETITION

Petitioner seeks a Writ of Certiorari to review the decision of the Eleventh Circuit dated October 4, 2002. As an initial point, the opinion was per curiam and unpublished. Pursuant to Rule 36-2 of the Eleventh Circuit Rules, the opinion therefore has no precedential value. As a result, the Eleventh Circuit's opinion could not conflict with any other decision as a matter of law.

Further, the opinion contains no discussion of whether federal or state law controls the interpretation of settlement agreements. Thus, the Eleventh Circuit's unpublished opinion is not in conflict with an opinion of any court which addresses this topic. Indeed, the Eleventh Circuit can affirm a district court's decision on any ground, including the application of a standard different than that applied by the district court. *Benanni Ship Supply, Inc. v. United States*, 459 F.2d 1558, 1561 (11th Cir. 1992). *See also Thigpen v. Roberts*, 468 U.S. 27, 29-30, 104 S. Ct. 2916, 2918 (1984) (Supreme Court may affirm on any ground that the law and the record permit). Thus, the affirmance of the decision in this case may in fact have been premised upon the application of federal law. Indeed, the result is the same under either standard, state or federal. Because the opinion does not specify the standard employed, it is impossible to articulate the Eleventh Circuit's basis for its affirmance regarding the enforceability of the Settlement Agreement. Therefore, the Eleventh Circuit's opinion does not create a conflict below.

Conflicts giving rise to a grant of certiorari must be "square" and "real." *See Greco v. Orange Mem'l Hosp. Corp.*, 433 U.S. 1001, 96 S. Ct. 433 (1975) (denying certiorari) (White, J., dissenting); *Beaulieu v. United States*, 497 U.S.

1038, 1039, 110 S. Ct. 3302, 3303 (1990) (denying certiorari) (White, J., dissenting). A conflict purportedly created by an opinion cannot be "square" or "real" when the opinion contains no language conflicting with any other opinion. As a result, the Eleventh Circuit's opinion here does not create a conflict upon which certiorari is appropriate.

For these reasons as set forth below, the Petition should be denied.

A. The Eleventh Circuit Opinion Does Not Conflict With *Alexander v. Gardner-Denver Co.*

1. The Eleventh Circuit's decision allowing enforcement of the settlement agreement without a hearing does not conflict with *Alexander*.

As the first issue presented, Petitioner argues that the Eleventh Circuit's determination that the district court did not commit error by failing to conduct an evidentiary hearing is in conflict with this Court's decision in *Alexander v. Gardner-Denver Co.*, 415 U.S. 36, 94 S. Ct. 1011 (1974).[1] Petitioner is incorrect.

In *Alexander*, the petitioner claimed that his discharge violated the terms of a collective bargaining agreement. *Alexander*, 415 U.S. at 36. Pursuant to the terms of the collective bargaining agreement, a binding arbitration was held. *Id.* Before the arbitration, petitioner filed a charge of racial discrimination with the Colorado Civil Rights Commission, which charge was referred to the EEOC. *Id.* During the arbitration, the petitioner testified that his discharge was the result of racial discrimination and informed

1. *Alexander* is the only opinion of this Court Petitioner claims conflicts with the Eleventh Circuit's decision.

the arbitrator of the pending charge. *Id.* at 42. The arbitrator ruled that the petitioner had been discharged for just cause and made no reference to the claim of racial discrimination. *Id.* at 42-43. Six months after the arbitrator's decision, the EEOC determined that there was no reasonable cause to believe a violation of Title VII had occurred and the petitioner then filed his lawsuit. *Id.* at 43. The district court held that the claim of racial discrimination had been submitted to the arbitrator and the petitioner was therefore bound by the arbitral decision and precluded from suing under Title VII. *Id.* The Supreme Court disagreed and held that the employee was permitted to pursue fully both his remedy under the grievance-arbitration clause of a collective bargaining agreement and his cause of action under Title VII. *Id.* at 59-60.

Mr. Alexander never executed a settlement agreement nor was there any hearing to evaluate the validity and enforceability of a settlement agreement. As Justice Powell explained, the issue before the Court was "under what circumstances, if any, an employee's statutory right to a trial de novo under Title VII may be foreclosed by prior submission of his claim to final arbitration under the nondiscrimination clause of a collective-bargaining agreement." *Id.* at 38. Simply put, the issue presented in the *Alexander* case and the issues presented in this controversy are entirely different.

Petitioner argues that the Eleventh Circuit conflicts with dictum[2] contained in footnote fifteen (15) of the *Alexander* decision.

> In this case petitioner and respondent did not enter into a voluntary settlement agreement expressly conditioned on a waiver of petitioner's cause of action under Title VII. In determining the effectiveness of any such waiver, a court would have to determine at the outset that the employee's consent to the settlement was voluntary and knowing. In no event can the submission to arbitration of a claim under the nondiscrimination clause of a collective-bargaining agreement constitute a binding waiver with respect to an employee's rights under Title VII.

Alexander, 415 U.S. at 52 n.15. The footnote deals with a hypothetical situation the circumstances of which are not described in detail. The footnote also does not state nor even suggest that an evidentiary hearing is required under all circumstances when enforcing a settlement agreement. Notably, Petitioner has failed to cite a single authority interpreting footnote fifteen (15) to mean that an evidentiary hearing must be conducted in all circumstances. As a result, no conflict exists between the Eleventh Circuit's opinion and this Court's decision in *Alexander*.[3]

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2. The United States Court of Appeals, District of Columbia Circuit, recently held that footnote fifteen (15) was "dictum." *Makins v. District of Columbia*, 277 F.3d 544, 547 (D.C. Cir. 2002).

3. As discussed *infra*, Petitioner cites *Kukla v. National Distillers Prods. Co.*, 483 F.2d 619 (6th Cir. 1973); *Autera v. Robinson*, (Cont'd)

2. The Eleventh Circuit's affirmance of the district court's application of state contract law is not in conflict with *Alexander*.

As the second issue presented, Petitioner argues that the Eleventh Circuit erred in affirming the district court's ruling, because the district court held that state law controlled the interpretation of the settlement agreement Petitioner signed. Petitioner argues that this determination also conflicts with footnote fifteen (15) of the *Alexander* decision. Once again, Plaintiff's argument is misplaced.

The Eleventh Circuit's opinion here does not address the issue of whether federal or state law controlled the interpretation of the settlement agreement. Even had the Eleventh Circuit expressly adopted the holding of the district court, it would not create a conflict with footnote fifteen (15) for which certiorari would be appropriate. In addition to footnote fifteen (15) being "dictum," the Court in *Alexander* was addressing whether a labor-management arbitration precluded a subsequent Title VII action. *Alexander*, 415 U.S. at 43; *See Makins v. District of Columbia*, 277 F.3d 544, 547 (D.C. Cir. 2002). As the District of Columbia Circuit stated when addressing footnote 15, "[t]he Court's remarks about settlements, contained in a footnote not citing any authority, can hardly be taken as representing its considered judgment that state law should not be adopted in Title VII cases."

(Cont'd)

419 F.2d 1197 (D.C. Cir. 1969); *Petty v. Timken Corp.*, 849 F.2d 130 (4th Cir. 1988); and *Stewart v. M.D.F., Inc.*, 83 F.3d 247 (8th Cir. 1996) for the proposition that an evidentiary hearing was required. None of these cases cite footnote fifteen (15) of the *Alexander* decision. Moreover, each of these cases are consistent with the Eleventh Circuit's opinion in this case and support Respondent's position.

Makins, 277 F.3d at 547. The District of Columbia Circuit then proceeded to apply state law to the enforcement of a Title VII settlement agreement. *Makins*, 277 F.3d at 549.

Petitioner's assertion that footnote fifteen (15) mandates that state contract law be disregarded when evaluating the enforceability of a settlement agreement is misplaced. Even if footnote fifteen (15) was not dictum, it does not require a lower court to disregard longstanding jurisprudence applying state contract principles to settlement agreements waiving Title VII claims. Of the 4,159 cases which cite *Alexander*, Respondent has not found a single court that has interpreted footnote fifteen (15) in such a fashion. In a recent opinion regarding the execution of a settlement agreement after litigation was commenced, the Eleventh Circuit rejected the application of the knowing and voluntary standard "instead of (or in addition to) traditional contract principles established in state law when deciding whether to enforce settlements involving Title VII claims." *Hayes v. National Serv. Indust.*, 196 F.3d 1252, 1254 (11th Cir. 1999). The inclusion of the parenthetical language "or in addition to" reflects the position of the Eleventh Circuit that under certain circumstances, traditional contract principles and the "knowing and voluntary" standard may co-exist. *See also Ridge v. Runyon*, 97 F. Supp. 760, 764 (E.D.N.Y. 1997) (Even courts which apply general contract principles to settlement agreements consider other factors typically considered under an application of the "knowing and voluntary" standard.). As a result of such recognized coexistence, there is no conflict here that warrants the granting of certiorari.

B. The Eleventh Circuit Opinion Does Not Conflict With Existing Circuit Precedent.

1. The Eleventh Circuit's decision allowing enforcement of the settlement agreement without a hearing does not conflict with existing circuit precedent.

In support of his argument that an evidentiary hearing was required, Petitioner cites *Murchison v. Grand Cypress Hotel Corp.*, 13 F.3d 1483, 1486 (11th Cir. 1994). *See* Petition For Writ of Certiorari, page 9. *Murchison* is the same case that the Eleventh Circuit cited in this case. The Eleventh Circuit expressly rejected Petitioner's interpretation that *Murchison* requires an evidentiary hearing:

> In *Murchison*, we stated that a district court must hold an evidentiary hearing before enforcing a settlement if there is a material factual dispute as to the existence or terms of the agreement or to the authority of the attorney to enter into the settlement. *Id.* Because those disputes were not present in that case, we affirmed the district court's decision to enter final judgment on the settlement agreement without an evidentiary hearing. *Id.* at 1487. Similarly, in this case, neither of those disputes is present, so the district court did not err by declining to hold an evidentiary hearing.[4]

4. Petitioner has raised no dispute regarding either the existence or the terms of the executed settlement agreement — nor is there a dispute. Nor has he, or can he, raise a material dispute about the authority to enter into the agreement — it is undisputed that Petitioner signed the agreement himself, thereby indicating his own approval.

(Cont'd)

In *Murchison*, the parties announced a settlement agreement in open court and the court subsequently entered an order of dismissal. *Murchison*, 13 F.3d at 1484. Unhappy with the settlement, Murchison filed a motion to vacate the order of dismissal and the defendant filed a motion to enter final judgment pursuant to the settlement agreement. *Id.* The district court denied Murchison's motion and granted the defendant's request. *Id.* Identical to the decision reached by the Eleventh Circuit here, the court held that an evidentiary hearing is required only when the existence or terms of the agreement or the authority of the attorney to enter into the settlement is in dispute. *Id.* As a result, the Eleventh Circuit's opinion here does not conflict with *Murchison.*

Petitioner erroneously claims that enforcement of the settlement agreement without an evidentiary hearing conflicts with *Puentes v. UPS*, 86 F.3d 196 (11th Cir. 1996); and *Bledsoe v. Palm Beach*, 133 F.3d 816 (11th Cir. 1998). *See* Petition For Writ of Certiorari, page 11. The factual scenario presented here and the scenarios presented in *Puentes* and *Bledsoe* are completely different. In *Puentes*, the court determined that it could not summarily enforce the agreement because the plaintiff was not represented by counsel at the time of execution, was forced to execute it in the context of a termination and was given only twenty-four hours to execute the document. *Puentes*, 86 F.3d at 197. None of those facts are present here.

In *Bledsoe*, a dispute arose over the scope and terms of an agreement executed in connection with a pending worker's

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(Cont'd)

Thus, Petitioner's contention that *Murchison* holds that when a party is seeking to be relieved of a claimed settlement agreement the Court must conduct an evidentiary hearing is simply wrong.

compensation action. *Bledsoe*, 133 F.3d at 819, 820. Consistent with *Murchison*, an evidentiary hearing was required only because there was a dispute over the terms of the agreement. As a result, no conflict exists.[5]

2. The Eleventh Circuit's affirmance of the district court's application of state contract law does not conflict with existing Eleventh Circuit precedent.

In support of Petitioner's second argument that federal, not state law, controls the enforcement of a settlement agreement in a Title VII action, he claims the Eleventh Circuit's opinion conflicts with existing Eleventh Circuit precedent of *Puentes v. UPS*, 86 F.3d 196 (11th Cir. 1996); *Bledsoe v. Palm Beach County*, 133 F.3d 816 (11th Cir. 1998); *Wichman v. County of Volusia*, 110 F. Supp. 1354 (M.D. Fla. 1999); and *Eatmon v. Bristol Steel & Iron Works, Inc.*, 769 F.2d 1503 (11th Cir. 1985). Petitioner's argument is again misplaced.

Again, the Eleventh Circuit made no such holding here. Even had the opinion below addressed the Petitioner's second issue and held that state law controlled, no conflict would exist. In *Puentes*; *Bledsoe*; and *Wichman*, the plaintiffs each executed a waiver contained in a settlement agreement *before* the commencement of litigation involving Title VII. *Puentes*, 86 F.3d at 197; *Bledsoe*, 133 F.3d at 818; *Wichman*, 110

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5. Petitioner further asserts conflict with the district court opinion in *Wichman v. County of Volusia*, 110 F. Supp. 1354 (M.D. Fla. 1999). In *Wichman*, the court found the terms of the agreement were not sufficiently clear to justify summary enforcement. *Id.* at 1362. Again, since the issue in dispute involved the terms of the agreement, *Wichman* is consistent with the opinion here as well as *Murchison*.

F. Supp. at 1362. In each of those cases, the courts applied a knowing and voluntary standard due to concerns about the imbalance of power between an employee and employer and questions about the scope of the releases. *Id.* None of those circumstances exist here. Petitioner, with his lawyer by his side and before a court certified mediator, after two days of mediation, executed a settlement agreement which expressly covered his pending Title VII claims. Application of the knowing and voluntary factors, the "*Puentes* factors" in the Eleventh Circuit, have been expressly not required under facts similar to those presented here. In *Hayes v. National Serv. Indus.*, 196 F.3d 1252, 1253 (11th Cir. 1999), the Plaintiff appealed a decision enforcing an agreement settling a pending Title VII action. The Eleventh Circuit held that the law of contracts governs the construction of settlement agreements. *Id.*

Directly contrary to Petitioner's position that the application of the *Puentes* factors is required here, the Eleventh Circuit held otherwise in *Hayes*:

> Hayes argues that we must apply special criteria instead of (or in addition to) traditional contract principles established in state law when deciding whether to enforce settlements involving Title VII claims. *See, e.g., Puentes v. United Parcel Service, Inc.*, 86 F.3d 196, 198 (11th Cir. 1996) . . . This is *not* the applicable standard when reviewing a case in which the employee (or former employee) was represented by an attorney who settled the matter on the employee's behalf.

Hayes, 196 F.3d at 1254 (emphasis added). *See also Resnick v. Uccello Immobilen GMBH, Inc.*, 277 F.3d 1374, 1349 (11th Cir. 2000) (principles governing general contract law apply to interpret settlement agreements even though the settlement

agreement arose under the federal law); *Schwartz v. Florida Bd. of Regents*, 807 F.2d 901, 905 (11th Cir. 1987); *Rhein Med., Inc. v. Kohler*, 889 F. Supp. 1511, 1516 (M.D. Fla. 1995); *Acquisition Corp. of Am. v. FDIC*, 760 F. Supp. 1558, 1560 (S.D. Fla. 1991).

Petitioner argues that because the decision of *Eatmon v. Bristol Steel & Iron Works, Inc.*, 769 F.2d 1503 (11th Cir. 1985), predated *Hayes*, *Hayes* should be disregarded due to the prior precedent rule. The prior precedent rule, however, requires the identical issue. *United States v. Steele*, 147 F.3d 1316, 1318 (11th Cir. 1998); *United States v. Hogan*, 986 F.2d 1364, 1369 (11th Cir. 1993) (The prior panel precedent rule applies when the first panel has addressed a specific issue of law.). Because *Eatmon* and *Hayes* dealt with different issues of fact and law, and are not inconsistent with one another, the prior panel precedent rule cannot be applied.

Eatmon involved the prior release of a Title VII action, not the enforcement of an agreement resolving a pending action. *Eatmon*, 769 F.2d at 1504. Moreover, the issues before the court arose out of a conciliation agreement entered into pursuant to federal law with the Office of Federal Contract Compliance. *Id.* at 1515. In evaluating whether federal or state law controlled the interpretation of the conciliation agreement, the Eleventh Circuit determined that because the contract was entered into pursuant to authority conferred by a federal statute, its interpretation was governed by federal law. *Id.* at 1515. Thus, *Eatmon* can be applied in only very limited factual circumstances which are not present here. There is no conflict between *Eatmon* and *Hayes*.[6]

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6. Even if an intracircuit conflict did exist, an intracircuit conflict generally is not a sufficient basis for granting certiorari. (Cont'd)

C. The Eleventh Circuit's Opinion Does Not Conflict With Any Other Circuit Precedent.

1. The Eleventh Circuit's decision allowing enforcement of the settlement agreement without a hearing does not conflict with any other circuit precedent.

In an attempt to keep this protracted litigation alive, Petitioner claims that the Eleventh Circuit's opinion in this case affirming the enforcement of the settlement agreement without an evidentiary hearing is in conflict with precedent established by other circuits. Plaintiff is simply wrong. Each case cited by Petitioner for this purpose supports the Respondent's position.

Petitioner cites *Kukla v. National Distillers*, 483 F.2d 619 (6th Cir. 1973); *Autera v. Robinson*, 419 F.2d 1197 (D.C. Cir. 1969); *Petty v. Timken*, 849 F.2d 130 (11th Cir. 1988); and *Stewart v. M.D.F., Inc.*, 83 F.3d 247 (8th Cir. 1996) for this purpose. Unlike here however, in *Kukla* and *Autera*, there was a dispute as to whether a settlement agreement existed. Parties to the alleged settlement agreements in both cases claimed that no agreement ever had been reached. *Kukla*, 483 F.2d at 620 ("McIntyre asserted that neither he nor

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(Cont'd)

Davis v. United States, 417 U.S. 333, 340, 94 S. Ct. 2298, 2302 (1974). When faced with different decisions from different panels of a court of appeals, it is primarily the task of the court of appeals to reconcile its own internal difficulties. *Wisniewski v. United States of America*, 353 U.S. 901, 902, 77 S. Ct. 633, 634 (1957). Doubts about the respect to be accorded to a previous decision of a different panel should not be the occasion for invoking so exceptional a jurisdiction of the United States Supreme Court. *Id.*

Liberty Mutual's home office had ever agreed to the $35,000 redemption, and that they would not approve the same"); *Autera*, 419 F.2d at 217 ("The attorney stated further that he mailed the release and praecipes of dismissal to Mr. Autera who then called us the next day and decided that he did not want to sign them and he would not return them to us."). *Kukla* and *Autera* did not involve a signed settlement agreement. Further, both *Kukla* and *Autera* provide that it is well established that a trial court has the power to summarily enforce a settlement agreement where the terms and existence of the agreement are not in dispute. *Kukla*, 483 F.2d at 620, 622; *Autera*, 419 F.2d at 219, 221.

In *Stewart*, the district court refused to grant an evidentiary hearing even where the existence of an agreement was in dispute. *Stewart*, 83 F.3d at 250. The Eighth Circuit affirmed the district court's ruling that: (1) there is no automatic entitlement to an evidentiary hearing simply because the motion concerns a settlement agreement; and (2) a district court is well within its authority to conclude that a party has not, nor could not, attack the validity of a settlement agreement. *Id.* at 251.

In *Petty*, which involved a Title VII claim, the parties announced a settlement in open court and the plaintiff testified he understood that a settlement was reached. *Petty*, 849 F.2d at 132. After the district court dismissed the action without prejudice, the plaintiff refused to execute the settlement. *Id.* at 132. The Fourth Circuit affirmed the district court's summary enforcement of the agreement and held that summary enforcement is inappropriate only when there is a material dispute about the existence of a settlement agreement or the authority of an attorney to enter a settlement agreement on behalf of his client. *Id.* Similar to this case, Mr. Petty

made allegations of misconduct by his counsel. *Id.* at 132. The Fourth Circuit held that when a litigant voluntarily accepts an offer of settlement, the integrity of the settlement cannot be attacked on the basis of inadequate representation by counsel. *Id.* at 133. "[I]n such cases, any remaining dispute is purely between the party and his attorney." *Id.* (citing *Napica v. Chesapeake & Ohio Ry. Co.*, 582 F.2d 1344, 1346 (4th Cir. 1978)). The court concluded by holding that a litigant's "second thoughts about the level of his recovery. . . . does not, however, establish unfairness or justify setting aside an otherwise valid agreement. . . . Defeated expectations do not, therefore, entitle the litigation to repudiate commitments made to opposing parties or to the court." *Id.*

No conflict exists between the Eleventh Circuit's opinion and any other circuit regarding the summary enforcement of this settlement agreement. The Petition should be denied.

2. The Eleventh Circuit's opinion does not conflict with any other circuit precedent; application of either state or federal law to the enforcement of the settlement agreement would not change the outcome here.

Petitioner claims that the Eleventh Circuit's affirmance of the district court's decision applying state law to the settlement agreement in this case conflicts with precedent from other United States Courts of Appeals. Because the opinion at issue does not state which standard was applied in reaching its decision, no conflict can be established. Moreover, application of the *Puentes* factors as Petitioner claims was appropriate, would not change the outcome here.

The *Puentes* factors are as follows: (1) plaintiff's education and business experience; (2) the amount of time the plaintiff considered the agreement before signing it; (3) the clarity of the agreement; (4) plaintiff's opportunity to consult with an attorney; (5) the employer's discouragement of consultation with an attorney; and (6) the consideration given in exchange for the waiver when compared with the benefits to which the employee was obviously entitled. *Puentes*, 86 F.3d at 198. The only *Puentes* factor which Petitioner has raised as an issue in his petition is the amount of time Petitioner was given to execute the agreement. Petitioner has not and cannot assert that Respondent told Petitioner that he had a specific time period in which to execute the agreement. Further, the agreement was the result of two days of mediation. Because there is no dispute that Petitioner had the opportunity to consider the settlement agreement without interference or pressure by Respondent and Petitioner was represented by an attorney, Respondent would have prevailed under the application of any standard. As a result, this case does not provide the basis upon which certiorari should be granted.

CONCLUSION

For the foregoing reasons, the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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